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Supreme Court, U.S.
FILED

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No.

IN THE SUPREME COURT OF THE UNITED STATES

KEVIN MCBURNEY

Petitioner,

V.

JEREMIAH J. JEREMIAH, Jr.

Respondent,

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF RHODE ISLAND

PETITION FOR WRIT OF CERTIORARI

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5288

QUESTIONS PRESENTED

A Did the Supreme Court for the State of Rhode Island commit error by upholding the dismissal of the Petitioner's complaint on Motion to dismiss(treated as a Summary Judgment) and upon finding that the Respondent, a Judge in the Family Court for the State of Rhode Island, was entitled to 'Absolute Immunity' from suit according to the Judicial Immunity Doctrine WHEN the following 'Non-Judicial' actions of Fraud,Deceit and other tortious wrongdoing were attributed to and undertaken by the Respondent during his involvement with the Petitioner's Divorce:

1. The Alteration of a Court Transcript-to conceal the 'oversight' of 6/25/93 to preserve the $50,000 as a source to award 'Fees'.
2. Appointing a Guardianship for the Petitioner in order to 'mute' his allegations of misconduct and fraud which otherwise served the interests of others.The Petitioner's wife never consented to this action nor was she ever aware what the Respondent was doing.
3. Protecting and encouraging Divorce lawyer misconduct rather than investigating allegations of such made by Kevin/Joann wife
4. Conducting hearings without a Stenographer and permitting false Court Orders to be presented by Rioles..
5. Improper unrecorded 'back-room' conferences with divorce lawyers that were conducted in order to coordinate/plan illegal activity. The language contained in the text of the Orders does not even remotely coincide with the dialogue contained in the transcription of the same proceeding.
6. Permitting the misrepresentation and false presentation of the 4/30/93 Court Order' that was executed as valid by the Clerk.
7. Improperly sealing the Court file for his own use and then lieing about its existence in order to provide excuse on 12/3/93.
8. Secretly providing Attorney Robert Beecher (Joann's second divorce lawyer) the opportunity to 'unseal' the file that was always held in the Respondents possession. NOTE:There was never any motion or formal request made to unseal the file in such a clandestine manner. Attorney Beecher later went to jail for such hijinks.

9. Unduly influencing another Judges proper deliberation of the Petitioners case before that Judge on October 12,1994. That Judge recused himself during a crucial moment in the Hearing, left the Court room, proceeded to the Respondent chambers and was directed by him to commit error and rule against the Petitioner - .

10.-Violating Rule of Procedure (Rule 60) on December 15, 1994 solely for the purpose of ridiculing and poking fun at the Petitioner in full view of a 'packed' court room.

B. Will the United States Supreme Court recognize that unscrupulous members within their Profession would Purposefully engage in Clearly 'non-judicial' action or acts 'in the 'Complete Absence of all Jurisdiction' to so do YET make it appear otherwise to extend the Cloak of Immunity' in order to protect the misconduct and fraud Of not only himself but others(who would not enjoy such Immunity standing alone).

C. With very little accountability and Absolute Immunity and Lifetime Tenure offering a measure of comfort and level of security (omnipotence); How much misconduct, fraud and Other inappropriate or wrongful behavior (action) can an Unscrupulous Judge like the Respondent get away with.... *'so long as he has his robes on'.*

LIST OF THE PARTIES

Petitioner: Kevin McBurney

Respondent: Jeremiah J. Jeremiah, Jr.

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Appendix A-- Order of the Supreme Court of the State of Rhode Island entered on March 26,1999 before briefing pursuant to Rule 12A(3)(b) of the RI Supreme Court Rules of Appelate Procedure.

Appendix B-- Decision on Motion for Summary Judgment heard before the Trial Judge of the State of Rhode Island Superior Court on August 5, 1997 and thereafter timely appealed to the RI Supreme Court .

Appendix E (1)--Order of the RI Supreme Court entered on 10/14/94 in the 'McBurney' Cases .(1st Appeal)-C.A.93-485 (1994.

PETITION FOR A WRIT OF CERTIORARI

Initially , the Petitioner would express his gratitude to the Supreme Court by granting his application for the extension of time allowed to file his Petition. He would now pray that a Writ of Certiorari issue to review an Order of the Rhode Island Supreme Court that upheld the dismissal of the Petitioners claim based upon Rule of Procedure-R12 and R56. The Rhode Island S.Ct. had affirmed the judgment of the State Superior Court that had Stated that the Respondent, the Chief Judge of the RI Family Court, was to Be entitled to 'Absolute Immunity' from suit according to law set forth under The Judicial Immunity Doctrine. The Petitioner would request that the United States Supreme Court undertake such review because the Lower Court failed to consider the extraordinary facts and circumstances that had prevailed upon the Petitioner and had weighed heavily in the support of his claim. Petitioner also believes that the peculiar nuances relating to the Respondents extensive political ties enabled him to engage in Non-Judicial conduct under false guise in order to protect others under his umbrella of Immunity who are not entitled.

The Petitioner has articulated in detail as to the corrupt nature and Purpose of the Respondents actions yet the RI Courts AVOID any reference To same. Petitioner believes (hopes) that this Court is far enough removed From and will not be affected by the pervasive influence of politics in order For proper justice to be served.

It is noted that there was a Service of Process(Rule 4 of Rules of Civil Procedure) issue that was raised by the Respondent during the State Superior Court proceeding that was never considered by the RI Supreme Ct. OR made a part of its Order which was based strictly on the Immunity issue. As such and mindful that this Court always abstains from reviewing issues of State Court Procedure, that issue would not be part of this Petition for review.

OPINION BELOW

The order of the Supreme Court of the State of Rhode Island is not Published but is reproduced in the Appendix (App. A) . This Final Judgment Of the Court of the last resort in the State of Rhode Island was entered on or About March 23,1999. This Petition was then timely filed within 90 days of Said date –with leave of extension granted.

STATEMENT OF JURISDICTION

The Petitioners Civil Action complaint in the Superior Court the State of Rhode Island was premised upon 42 USC Section 1983- The Civil Rights Act based upon the 14th Amendment of the United States Constitution as well as ancillary common Law claims of Fraud, Intentional Infliction-emotional Distress, Conspiracy and Interference with Contract and other tortious wrongdoing. A Federal Question was presented before the Supreme Court of Rhode Island for review and its determination of the validity of same as well as the Court's application of the Judicial Immunity Doctrine to the facts at hand. As such, Petitioner invokes the Jurisdiction of this Court to review the RI Supreme Court Order by this Writ of Certiorari based upon 28USC Section 1257(1).

RELEVANT STATUTORY PROVISIONS

1. 42 U.S.C. Section 1983:

Every person who,under the color of any statute,ordinance,regulation,or custom-usage , of any State or Territory or the district of Columbia,subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights,privileges,or im munities secured by the Constitution and laws ,shall be liable to the party injured in an action at law,suit in equity or other proper proceeding for the redress .

STATEMENT OF THE CASE

Introductory Note-(to a very involved case)

The Petitioner would caution that merely a cursory or superficial review of the complicated factual matter that is presented herein might lead one to believe that this case is quite "bizarre". If you do so then you would miss the point (as did the lower courts of the State of Rhode Island).

Petitioner has endeavored to set forth in careful detail the plethora of particular instances denoting the legal intricacies of fraud, misconduct and the esoteric "hidden" meanings to such that even lawyers and judges themselves do not fully comprehend – Let alone the simple lay person. After all, what is depicted involves the less-than-honorable 'elements' of the legal "business", most of which the rest of the legal profession, as a whole, want to keep the general public unaware of.

Petitioner ,as an attorney who is now a victim of such exploits or dealings, is readily able to clearly articulate in precise detail all of such items occurrences and events that have accumed to cause the downfall of his life. Once he would discover and reveal the heinous wrongdoing of the legal professionals involved then he would relate such an understanding to others (who might have suffered in similar fashion but would not be able not able to comprehend on their own but only through the Petitioners experience .

In this regard, it is fundamentally understood that only a lawyer can catch another lawyer (and a judge) "breaking the law". And only a lawyer who has been so tormented and harmed by such wrongdoing would so diligently and so persistently risk so much to his livelihood. The Petitioner is broke and ostracized by all of his family, children ,the legal community and even former "friends" because he has had the fortitude to sue "powerful" people in Rhode Island who he knows are guilty! And they must be held responsible as the truth must come to light. At first glance it all might seem wild and strange, but it must be remembered that always in the State of Rhode Island – "Truth

is always stranger than fiction" – Given the history and tradition with Rhode Island power, politics and corruption. . . and no one would have been in a better position to observe such than a McBurney!

Therefore, Petitioner would urge a careful reading of all the facts, circumstances, events, people involved and the appended exhibits as they correlate to the interwoven fabric of the legal-commercial-political network of such a' closed' state such as Rhode Island, in order to properly understand the truths contained therein. It is to be noted that "no one" has ever refuted or even responded to any of these substantive allegations posited by the Petitioner; always preferring to side-step the truth by applying procedure as the lower courts of Rhode Island have. For that matter, Respondent has all but conceded that there was an Alteration of a Court transcript (in order for the Respondent to steal $50,000) by suggesting that there is Case Law precedent that would somehow condone or justify such an heinous act. If the Respondent, at this juncture, chooses to deny this fact then the Petitioner stands poised and ready to prove the Alteration by submitting his Memorandum and evidence in support thereof (part of lower Court record) in rebuttal to the Respondents denial under Rule 15.6 of the United States Supreme Court Rules. As far as the Petitioner is concerned relating to the Alteration issue, it is not a question IF it was done (foregone conclusion) but rather the issue as to what this Court is going to do about this factual truth that Judges will Alter transcripts at will that weighs heavily in his mind.

The Petitioner would seek excuse for the caustic tone of this writing. He has decided upon a direct, hard-hitting approach (with the truth) as he has previously attempted the' normal channels of advocacy' – and no pays heed! He has become quite disillusioned with his chosen professional career. His life has been ruined by the Respondent who served as the endorsement, "catalyst" or the "directing force" to protect the divorce lawyers from discovery by the Petitioner of their attempts to devour his $50,000 bank fund(as fees generated contrived billable hours. frozen in restraint by Court order) and to serve the interests of Christene James (Petitioner's sister) with her take-over of the firm.

Because of such, the respondent should be stripped of his shield of immunity and be made to answer the Petitioners allegations

A. The Course of the Proceedings Below

This case is an appeal from an Order of The Supreme Court of the State of Rhode Island and entered March 26,1999 (App.A). There, the Appellate Court, by Show Cause without Briefing or Oral Arguement, upheld the Judgment of the Superior Court granting the Defendant/Respondent Motion to Dismiss (treated as Summary Judgment) based upon the RI Rule of Civil Procedure on 8/5/97(App. B) After the timely appeal, the Plaintiff/Petitioner filed his Rule12A (RI Supreme Court Rules) Statement of the Case which provides the extraordinary factual backround to the Plaintiff/Petitioners claim that was primarily based upon 42USC Section 1983 and ancillary State common Law claims: Intentional Interference, Emotional Distress, Conspiracy and Fraud (App. C). By its Order of 3/26/99,the RI Supreme Court has called into question the validity of its determination that the Respondent is afforded 'Absolute Immunity' from suit under the Judicial immunity Doctrine. As such would present a 'Federal question' which would warrant this Petition by Writ/ Certiorari for review by the United States Supreme Court. The ultimate question to be

decided by this Court is whether the 'actions' of the Respondent, detailed and analyzed herein, were made in 'The Complete Absence of Jurisdiction and were TRULY 'not within the course of his exercise of his judicial duty'-(by nature and effect). The Respondent, with his vast experience with insider political deal-making- knew well enough to conceal and protect 'non-judicial action' under his 'umbrella of Immunity'. Those who stood in review and were misled by such false impressions would be inclined to believe 'on the surface' that these same actions were protected unless they would be able to delve deeper into the complicated facts of this matter to understand the REAL truth!

The RI Supreme Court may well have been lulled by such falsity because they misunderstood fundamental points of contention raised by the Petitioner. On page one (1) of its Order, the Appellate Court stated-"Plaintiff alleges that the defendant.... improperly credited the plaintiffs wife for certain funds withdrawn from the account". In fact, the Plaintiff/Petitioner had never alleged such. No where is it to be found in any of the Plaintiffs pleadings or Statements of Proof submitted that the Defendant/Respondent

IMPROPERLY credited the account. The Plaintiff-Petitioner has always conceded that the Family Court is empowered to so credit the account the way it was stated in the transcript-whether improperly or not! That was NOT the point of contention raised. The point of contention raised by the Petitioner was that it was not stated at all during the June 25,1993 proceeding but was later inserted into the transcript by alteration and fraud! The Respondent and Brenda Rioles, the culpable divorce lawyer involved with the fraud perpetrated regarding the June 14,1993 Amended order-dated October 14,1993, had attempted to conceal the oversight of their failure to credit the account (for future Counsel Fees) AT THE TIME (June 25,1993) by scheming to alter the transcript of same proceeding at a later time in order to so reflect and indicate such a credit. See -Petitioner's First Statement of Proof (Alteration of a Transcript-Fraud!). The RI Supreme Court failed to draw the distinction between these two varying concepts.

The Lower Court made similar mistakes concerning the Respondents Guardianship Appointment and his protection of Lawyer misconduct and fraud uncovered and revealed by the

Plaintiff/Petitioner. Not only was such an Appointment a Non-Judicial act under these facts and circumstances (only Probate Judges are so empowered, not Family Court Judges) but such an action was meant and intended by the Respondent to protect the same lawyers who were accused by the Petitioner of the fraud and misconduct alleged. The RI Supreme in a predecessor case involving the parties had decided to 'side-step' these issues altogether by relying on the Doctrine of 'Mootness'- See App. E(1). In that instance, Rioles had provided the Supreme Court with an escape from reviewing fraudulently procured counsel fee awards by unilaterally waiving the $2,500 fee awarded to her by the Respondent (on 6/14/93)-when there was no stenographer present(intentionally) to record the proceedings in the first place (which would reveal the act of fraud)! Mootness was a way out of the controversy. There are other instances of such misapprehension as further detailed in other related matters before the RI Supreme Court involving the same parties (See App. E(2) and E(3)).

The net result to all of the aforementioned is that the Petitioner has been deprived of the opportunity of going forward

with the Proof in support of his Claim that the actions undertaken by the Respondent were ,in fact, Non-Judicial in nature and effect but he has been 'Stone-walled 'in doing so in the State of Rhode Island because of misapprehension. The Petitioner respectfully requests that the United States Supreme Court redress this concern by granting the Petition. One fact to be noted is that the RI Supreme Court believed as stated in its Order that the Petitioner was displeased with the results of his Family Court Litigation when in fact he was NOT displeased with the Family Court litigation (not the issue) but only with the Misconduct and Fraud of the Divorce lawyers and Judge Jeremiah that was clearly proven (not with his wife or the fact that they would divorce-an event that the Petitioner welcomed)... and as such is NOT a frivolous matter as stated!

B. Statement of the Facts

Kevin and Joann McBurney were married on June 14,1986. They have two children born of this marriage; Alexander -DOB-9/28/86 and Ashley-DOB- 8/4/88. Kevin and Joann had always a pre-arranged agreement or understanding that upon the

eventuality of divorce the children would be the beneficiaries of any and all assets of the marriage that were accumulated and that the divorce ,itself , would be swiftly, efficiently, and inexpensively concluded without conflict. As alluded to previously, Kevin was also enmeshed with a family business fight with his sister, Christene, with whom she and he are owners with equal shares in the Family Law Business in Pawtucket, Rhode Island. Christene had always exercised pervasive influence over Joann because of their desparity in status and education . Because of such , she had always tried to encourage Joann to file a divorce action against Kevin and to "take him for all you can get". Christene did so in order to gain leverage over Kevin and his alliance with his father at the time. Christene had wanted to 'tie Kevin up' with his divorce and then drive a wedge between he and his father before taking over the Family Law firm and then oust Kevin and his father from the business. By that time, Kevin's father had already initiated a Superior Court Civil Action against Christene when she had embezzled monies from her own father's Pension funds See (which was managed by her Stockbroker husband, Richard James,

who was operating on his own agenda of Embezzlement and fraud dealings that involved the entire McBurney family monies- including Kevin's childrens Brokerage funds. Kevin had caught him stealing and engaging in fraudulent dealings as well. Kevin had become quite adept at catching 'white-collar' types breaking the law.). Kevin was poised and ready to file a Corporate Derivative Shareholders action against Christene as well as a 'Churning/Fraud of Stockbroker claim against her husband at the time. Both Kevins and his father's claims in alliance would have been formidable. However, Joann was convinced to file the divorce action on or about March 12,1993 which thereafter had intervened with Kevin's plan . Brenda Rioles, a female lawyer acquaintance, entered her appearance on behalf of Joann. Furthermore, Her brother, Paul Rioles (now a lawyer) and Kevin had mutual animosity towards each from long ago. Paul, as a law student at the time, was the first to consult with Joann. He had never disclosed the animosity that he and Kevin held towards each other. His first words to her were:

"So. you re Kevin's wife-well every dog has his day". Joann did not comprehend the significance to this statement at the time or the foreboding sense of doom that would lie ahead. Rioles would not care that Joann and Kevin had already agreed upon the terms of their divorce. She would act contrary to her clients wishes because there was money to be made off of the McBurney case$50,000 and she had 'relatives' in the Family Court to protect her! Furthermore, she had the endorsement and assistance of Christine James. Christene had actively assisted Rioles throughout the course of the divorce in order to harm the Petitioner, her brother (and to serve her own interests to take over the McBurney Family Law firm coincidental at the time)-always without Joann's knowledge or consent. Lastly, the Respondent had decided to handle the McBurney case himself the entire way and thereby offer for all those who were caught stealing by the Petitioner full protection under his 'umbrella'. Another political debt paid off.

Thereafter, March 12,1993, this divorce odyssey has continued unabated throughout long stretches of greed, wicked and

cruel misconduct, sickness, family break-ups, children's anguish and the constant struggle to survive ... to the present day!

A bitter irony may now result since Kevin and Joann have planned to Finalize their divorce on 9/7/99 (after 6 and one-half years) AND the terms of their proposed divorce are very similar to their agreement they had before the divorce was filed.

C. Travel of the Case (Sequence of Relevant events)

a) 1950- John F.McBurney,Jr (JFM).-founded Family Law firm. At one time, he was the best trial lawyer in the State-a one man show with more cases than large major law firms. Also he has been a State Senator since 1956-his Election record-54 wins / 0 defeats. Extremely well-liked. Could have done anything that he wanted-Judge, U.S. Congress, anything! Instead, he decided to give his children as comfortable a life as they could possibly want during the 'Baby-Boom' years of unparalleled wealth and affluence.

b) 1982- Jack McBurney, Kevin McBurney and Christene McBurney made officers and equal shareholders/owners of Law firm by JFM (who wanted to retire). Sibling Rivalry defeated plan.

Family business once worth millions and at present -a 75 year old man who is forced to STILL try cases (successfully) because his children failed him.

c) 1986-98=ChristeneMcBurney/Richard James(a smooth talking Clinton-like conniver who married Christene to get at the McBurney money, power and prestige. Because of McBurney, Mr.James became a Stockbroker with major firms, a top aide for Gov. Bruce Sundlin, General Treasurer endorsed Democrat, endorsed Democrat-Mayor of Pawtucket, RI, a lawyer and Chairman of the RI Democratic Party and socially acquainted with President Clinton. The Petitioner was the ONLY one who knew the truth about Mr. James and when he tried to 'blow the whistle' on Mr. James, the entire State of Rhode Island turned against the Petitioner. Mr. James was caught stealing from the entire McBurney family as well as the Petitioners childrens trust funds and clients of the law firm.

Mr. James true colors were shown on _____ when he was charged/convicted of assaulting his girlfriend while trying to sell 'Crack-cocaine'. Upon arrest, Mr. James had tried to hang

himself He and Christene were divorced on 3/19/99.

Not surprisingly, the Respondent handled their divorce and SEALED the file. The Respondent had intervened in a Family dispute by offering people like James refuge under his 'Cloak of Immunity' because they appeared to be politically significant and because of such a Family has become broken down and crumbled.

d) 1993-Christene James-take-over of Law firm coincided with Petitioners divorce entanglement and his sickness (stress induced rectal bleeding resulting from all of the tumultuous misconduct by legal professionals and not the fact of divorce, itself.). Respondents 'Guardianship' paved the way for the removal of the Petitioner and his father from the firm without severance or compensation. She even took away all medical benefits for the Petitioner's children. She has plundered and robbed the business of its assets and resources and has dashed the hopes and aspirations of the 16 McBurney Grandchildren. She would not have been able to get away with any of such misdeeds if it were not for the Respondent. Perhaps even the Pawtucket Fireman who was murdered trying to fight the McBurney office fire of 8/16/93.. might still be alive;

c) Joann Lizotte- a decent person and a good mother. She and the Petitioner have been for the most part amicable with each other given the torment of the past 6 years (money or the lack thereof is the only reason for their discord). Her flaw is that she has been easily manipulated by others and becomes volatile as a result. Petitioner has painstakingly tried to show her in simple language that she is a victim in this morass as he is. Petitioner has tried to convince her not to be afraid to tell the truth concerning their ordeal. At some point, she will understand that the Petitioner has been the best friend that she will ever have and he will always be there for her because she has had very little guidance in her life- no parents, abusive boyfriends and family members who stole from her (just like the McBurney's).

It must always be understood that the Petitioner and Joann had always maintained separate life-styles which was acceptable to both...until it was brought to attention that the Petitioner was having a relationship with a beautiful and intelligent young woman from Toronto, Canada who happened to be black. Racial Prejudice soon became an issue upon which people like Rioles, Jeremiah,

O'brien and Christene James exploited and Joann was made to suffer as a result.

f) 1980-90 Cranston RI- widespread municipal corruption among Public officials under the administration of Mayor Ed Diprete. Respondent was his city solicitor and top aide. When Diprete became governor of RI the Respondent became his top Executive aide and was rewarded by Diprete and appointed a Judge in1986 and Chief Judge one year later despite his lack of experience not only as a Judge but as a lawyer. The Respondents sister had also become a Worker's Compensation Judge during this time as well. Jack McBurney, as a Senator on the Judicairy Committee, was instrumental in presenting their appointments.(Please Note that in Rhode Island Political party affiliation is not important-'they are all the same animal'. In Rhode Island, there are no 'true' Newt Gingrich type of Republicans, only disgruntled Democrats who 'turn'.The good and honorable people of Rhode Island would not tolerate a Gingrich.)

Diprete eventually was caught in a corruption and bribery scandal during his tenure as Mayor of Cranston and Governor of

RI and ended up in jail. . It would stand to reason that the Respondent, wno was so closely associated with Diprete during the time,was intertwined in Diprete's web of corruption as well.

g) (Aftermath-Petitioner is Homeless/unemployed-forced into involuntary early retirement-a constant struggle to survive. 1994(Beecher as Joanns lawyer later goes to jail. Jeremiah makes mockery of R60- The second phase of struggle and 2nd Appeal Petitioners 'entry' into his own home(no Order restricting him)and Beecher telling Joann to file 'Abuse'-"family court hands them out like candy10/12/94- Joann and children forced to live on bank accounts- Petitioner begins to put the 'mystery' together after he Recovers from sickness. Petitioner and his father are both 'ousted' From Family law firm that he had founded by Christene&Co. Petitioner learns that he can not get a job with an established Law Firm because of the Guardianship Stigma and his resulting notorcity. Occupational suicide if someone hires him in such a small state like Rhode Island. Petitioner and Joann can not even get a Lawyer to help them-the issue is too 'hot' or controversial.

1995-re-group-Petitioner and Joann jointly 'Fight Back. They file complaints to Judicial tenure Committee against Jeremiah and O'brien, Disciplinary Complaints against the lawyers. All their complaints are dismissed OUTRIGHT'!-no hearing,no response, No admission,no denial of allegations-NOTHING! Joann and Kevin see this as a 'Fix' and go to the Providence Journal-again Nothing. Attempt to speak with Regulatory, consumer Agencies For help-Again nothing. They do not know who to turn to for help For something like this. Even the Supreme Court of Rhode Island Will not get involved with the controversy. Superior Court Litigation would be the only recourse. Petitioner still allied with his father and Joann but on 'shaky ground' . Petitioner loaned sum-$7000 to Joann's boyfriend who reneged upon and breached agreement; Petitioner sues in Superior Court as a result and is defaulted for failing to answer complaint in time .All other Superior court lawsuits are filed within Statute/Limitations.
1997-Corporate litigation-Judge-Israel of RI Superior Ct. fails to consider three impartial witnesses who make a liar out of

Christene. As a result, McBurney family thrown into further Chaos. Joann moves to Florida to escape; Petitioner shrewdly restrains the sale of the marital home ,receives exclusive use to control the house and applies rentral income to Joann to offset support obligation- family Court will not reduce outrageous child support order ($2.000 per month total obligation) even though Petitioner can not find work as a lawyer because Jeremiah was the one who caused the petitioner to become unemployed and no Associate Justice will dare to 'cross him'.-When Joann was living in florida the Petitioner could have sold everything and took off and told everyone to go fuck themselves but he would not do such a thing to his children-upon evaluation as to who is honorable- Petitioner can look himself in the mirror-he wonders who else can.

1998-Florida-proves to be a waste of time- Joann and the children return to RI- She lives rent-free at the boyfriends house (his conscience is bothering him).

1999-With a lawyer to fight Christene, it becomes time to 'stand and fight' and also to finish the divorce . Petitioner's life has been

ruined. Maybe at least the highest Court in the land will make those in Rhode Island who are obviously responsible to explain why! Petitioner will just keep going until he gets some answers- not procedural avoidance! A copy of This Petition will be copyrighted 'down the street' on the same day of filing. The Petitioner's 'story' might be worth-while to the general public... if that is the only way to get the truth told! The Petitioner's life during the past 7 years , unemployed and trying to survive is even crazier than the story you will just read!

REASONS FOR GRANTING THE WRIT

A. The 'Nature' of the Judges actions is Non-Judicial.

B. The action undertaken by the Judge leaves a 'false impression' that it is a 'judicial' act when it really is not.

C. How much can a Judge get away with... so long as the robes are on!?

In affirming the trial court judgment, the Supreme Court of Rhode Island held:

"The defendant . unless he acted in the clear absence of all jurisdiction over the subject matter before him, is absolutely immune...from suit[illegible]."

Multiple citations lead off by Stump v. Sparkman, 435 U.S.349(1978).

It seems that all cases reviewed and researched in this area of the law start from the standpoint of this Principle of law and the Stump case cited in support thereof.

The RI Appellate Court also added:

"The defendant, because of that subject matter jurisdiction, enjoys absolute immunity... even if his actions were in error, done maliciously, or in excess of his authority."

Most other cases in this area of the law recite a colloguy about the history and purpose of the 'Judicial Immunity' doctrine and the need (for the Judge) -"to be

free to act upon his own convictions ,without apprehension of personal consequences ..."
Bradley v. Fisher ,80 U.S. 335,351 (1872).
These cases invariably make a veiled reference to vexatious or dissatisfied litigants who manufacture allegations of improper, corrupt or incompetent conduct attributed to the Judge before the particular action of the Judge in question is upheld and immunity is accorded to him. Even the Rhode Island Supreme Court had labeled the Petitioners Complaint against the Respondent-"most frivolous"-Appendix pg. A-3.

As such, none of the cases referenced or their facts as recited or the Principles of law as stated even remotely resemble the set of facts, special circumstances or events and certain features that are presented by the Petitioners case. Therefore, none of the Cases usually stated as precedent would offer any guidance or assistance to this Court. The Petitioners case stands alone and unique based upon the Principle that it stands for. All of the other Cases cited make reference to the claimants antecedent action or draw reference to hopeless accusations against the judge as an afterthought to the original action. Immunity was obviously granted and those cases were properly decided.

However, the Petitioners case is not a divorce action .Per Se, but it involves direct allegations of Judicial

Misconduct and fraud perpetrated [illegible] guise of a divorce case. Any appearance of such was merely a smoke-screen to draw attention away from the REAL purpose of the Respondents actions. He had a separate agenda that he had undertaken in conjunction with the divorce lawyers... which had not a thing to do with Kevin and Joann's pre-arranged agreement upon divorce ,to wit: the wrongful conversion of the $50,000 held in restraint PLUS serving the interests of Christene and her husband, Richard James.[2]

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[1] It must always be understood that Joann was never informed of or consented to ANYTHING that Rioles/Jeremiah were doing 'behind closed doors'(in conference). In fact, it was Joann who objected to all the ..."B.S"that was going on during April-July of 1993. She was the only one who had helped the Petitioner as she later on terminated Rioles- Joann stated at the time-"This is not how I wanted this Case to go". With the Respondent providing full protection under his 'umbrella' of Immunity, $50,000 held in restraint offered too much of a temptation for those who had embarked upon their own agenda to secure sizable fees... and kickbacks! This must be clearly understood... no matter how incredulous it might seem. Reality of the 90's.

2.Jeremiah, as an astute political animal tutored by Diprete, would not be foolish enough to 'take on' a McBurney (with political and Lawyer roots in the State of RI-going all the way back to the 1930's-way before his time!) by castigating the Petitioner the way he did (as detailed herein)...unless he had the complete endorsement of ... 'other McBurney's'.

All of the 'Immunity' Cases referenced relate to claimants who had Been aggrieved by litigation and reacted against the Judge as a result thereof (Procedural error,license revocation,civil rights convictions,fired employees, disgruntled lawyers /spectators ,etc).If the Judge did anything wrong, it was because of an ancillary consideration-'he blew the call'- but he gets Immunity.

However, the Petitioner's case involves a 'different ball-game'altogether Here, 'Non-Judicial action' is made to appear to be 'judicial' so the shield of Immunity can be raised in order to protect/conceal the particular(wrongful) 'Non-Judicial action'in question and thereby serve the Judges own ulterior motivation or purpose. Unscrupulous (unworthy) Judges, such as the Respondent, have regularly ulilized such a method of approach.[3]

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3. Originally, upon its creation, the Judiciary had sought to achieve a sense of independence from the Executive and legislative branches of government or else it would lose its autonomy. This was John Marshalls concern and it was a legitimate one... at the time. Lifetime tenure and Absolute Immunity were perceived to be the necessary balancing factors needed to ensure the stability of the Court as a Separate Power within this Frame .However, now, It might be that 'the pendulum has swung the other way'and the Court is no longer insecure about its place in public service.

Nowadays, omnipotence has allowed unsavory individuals who have obtained their judgeships via the political route (rather then by meritorious achievement-McBurney's as State legislators responsible for such appointments for the past 40 years in RI understand the distinction) the luxury to undertake Non-Judicial ,even criminal, action without regard for impunity. There would be very Little accountability for such action when one is afforded Lifetime tenure and Absolute Immunity- very little risk. Given the political background of the Respondent and the acts of misconduct that the Petitioner has attributed to him, this might be accurately reflective of his mindset.

There would be no Case on the books that could lend much assistance To the Court upon its review of the peculiar facts as presented by this Petition To determine whether the Acts of the Respondent in question are Judicial or Not. The general rule as to whether the particular act is judicial or not would depend upon the 'nature' and 'function' of the act. Forrester v. White484US 226 U.S.226,227112 S.Ct. 538,539 (1988). Such Immunities are grounded in the nature of the function of the act and not the actor who performed it. Clinton v. Jones ___ US___,117 S.Ct. 1645(1999). Even if the act is deemed To be Judicial there would still be no Immunity afforded if the action is undertaken in 'Complete Absence of Jurisdiction'. The 'Functional' analysis turns on two factors: (1) whether the nature of the act is a "function normally performed by a Judge".(2)regarding the expectations of the parties-as dealing with the Judge in his Judicial capacity. Mireles v. Waco, 502 U.S. 9,11; 112 S.Ct.286,288.The question still remains as to how would the acts of Respond-Ent be classified as. It would strain credulity to think that the acts Petitioner has attributed to the Respondent and their alleged ultimate purpose would

be considered to be acts 'normally performed by a Judge from which the parties expected to be dealing with (judge) in his Judicial capacity'-Stealing $50,000 and then providing cover under an 'umbrella' of Immunity would certainly not be contemplated by the parties under this standard.

There is a narrow exception that has been articulated in the 6th circuit That might have bearing on this case. In the case of Barnes v. Winchell, 105 F.3rd 1111 at 1117,(1997) the Court held:

> "when it is beyond dispute that a judge has acted out of personal motivation and has used his judicial office as an offensive weapon to vindicate personal objectives ...do not amount to Judicial Acts". Citing Harper v. Merckle 688 F.2d. 848,851(1981)

Perhaps this Court might consider the language set forth by this exception When attempting to reconcile the following acts undertaken by Respondent With his Judicial function:

A. **Alteration of Transcript**-(no longer an issue 'IF' it occurred)

There is also no issue whether a Judge is empowered to 'credit an Account'-he is! It wasn't the point he did not do so at the time-is! Case of Green v. Maraio ,722 F.2d 1013 (2d Cir. 1983) was cited by the Respondent as setting precedent for Judges to alter transcripts. However ,

The mere act of a judge changing a jurors name by such alteration can not Set precedent to justify altering a transcript to'steal'$50,000 held in restraint, Besides, the Judge in Maraio readily admitted to his 'act'whereas there has Never been any acknowledgement (or denial) of same Alteration in this case. The petitioner had painstakingly discovered it and has tried to reveal same to The proper authorities-it has been concealed all throughout this ordeal-silence, Also, it is understood that the Petitioner was NOT "displeased with the Results of his divorce. [4]Again, the RI S.Ct. failed to realize that this was not the point to be made-the fact that the Alteration of the Transcript was set and arranged in order for the Legal Professionals to steal$50,000.That's the point! If Respondent disputes the Alteration then Petitioner will prove it in Reply!

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[4] Petitioner and his wife have amicably carried on during the past years of turmoil-they sit together at their childrens little league games and events. The only discord they may have relates to Money ...or the lack thereof. Petitioner is not displeased with his wife at all! She is not the one at fault. She neither understood nor demanded or expected that ANOTHER $50,000 would have to be credited to the bank account by the Petitioner. She had already taken control of the original $50,000 as suggested by the Petitioner ' , to keep it away from ... the wolves! During the time period AFTER the 'replenishment' was supposedly ordered there were no letters ,documents, correspondence or any other exchange reflecting such an action. NOTHING!, not even the June 14,1993 or the June 28,1993 Court Orders reflected such an occurrence. All there exists is Rioles's Oct. 14, 1993 dated Amended Order of the June 14,1993 hearing (conceded by everyone as not having a Stenographer present) denoting a strange order to 'credit the account' which standing alone makes no sense- until read in conjunction with the June 25,1993 transcript that was finally produced on or about February of 1994-Then the Alteration was discovered!

Guardianship-(purpose or function of the action was to silence)

The July 30,1993 declaration by the Respondent Guardianship was appointed for the Petitioner effectively ruined his life; Petitioner would be deemed as'non-compes mentus'-a kiss of death to his clients,associates other lawyers,etc. Christene exploited this opportunity by proceeding to take over the McBurney Family Law firm and Rioles was allowed to get away without investigation of her wrongful conduct. The Guardianship had protected her from sanctions or worse. It served no other purpose.

There is no statute,rule or law that would justify violating the Petitioners constitutional rights the way that Respondent did-without An opportunity to be heard and justification .Joann never was awareof What Respondent and the Lawyers were 'plotting' against Petitioner . The hearing that was scheduled for said date concerned ONLY a menial Motion to Compel Interrogatories as the only matter and the Petitioner's Lawyer was ready to respond; the Petitioner was at the Boston Circuit Ct. Family court Judges are not empowered to so act as the Respondent did to he Petitioner, only Probate Judges are.Therfore, Respondent appointmen Would be in 'The complete Absence of Jurisdiction'. The RI Supreme Court chose to avoid discussing the Real function or purpose to the action And the real issue to be determined[5].

5. The RI Supreme Ct. had the opportunity to make new law to redress this issue during the Petitioner's '1st Appeal' but instead chose 'mootness' rather than challenging the Respondent for what he did to the Petitioner .He maimed the the Petitioner by this act the same as if he shot him-Could he get away with that!?

C. **Protecting the Divorce lawyers under the 'Umbrella of Immunity'**

Throughout the course of 1993-1994 the divorce lawyers had engag In acts of fraud,misrepresentation,deceit, embezzlement,forging the Stipulations, proffering signatures of Clerks to court orders,false order and a wide array of other instances of misconduct that both Kevin and his wife presented to Respondent- who protected the Lawyers.

D. **Conducting back-room un-recorded conferences with Lawyers**

Court Orders during July 27-30,1993 have no correlation to the Transcripts and as such would present a descrepancy. Purposely Done in order for Jeremiah and the divorce lawyers to 'huddle'/plan.

E. **No Stenographers present when hearing was conducted**

Intentionally arranged in order to avoid detection for wrongdoing.

F. **Improperly sealing a court file then 'lieing' about its existence**

G. **Coercing and advising a fellow Judge into rendering Judgment Improperly Against the Petitioner-October 12,1994(to harass)**

H. **December 15,1994-Respondent makes mockery of Rule 60**

The proceeding was merely to allow the Respondent to ridicule Poke fun at the Petitioner -its nature and purpose is non-judicial

All such action detailed herein served the following Functions:

1. **The protection of Divorce lawyers under umbrella of immunity**
2. **Entangle Petitioner in a Divorce Controversy in order to accrue billable hours and thereby award counsel Fees.. and kickbacks.**
3. **Serving the interests of the Petitioner's adversaries.**

CONCLUSION

By way of conclusion, I ask the United Stattes Supreme Court to grant this Petition and to instruct the State Courts of Rhode Island, accordingly .I have purposefully not included within the text of this Petition any reference to any of the particular details Or any evidence in support of the allegations of fraud , misconduct Or any other indications of corruption that I have attributed to the Respondent. I had filed a Statement of proof I&II in support and proof of all the allegations that I have made previously when the matter was before the State of Rhode Island and was incorporated thereinto the record upon disposition by Motion. Rule 12 and Rule 56 mandate that any and all allegations of fraud,misconduct and

Other falsehoods committed be presumed to be true. All of such instances that have been precisely detailed and would enhance The credibility of the Petitioners Claims because of their misdeeds. Christene James (Arson/Murder) and BrendaRioles(fraud and misconduct). I seem to be the only one standing who has not Been the subject of controversy and Scandel. Although now, they are dysfunctionally broken down as a Family, they have never been the subect of contraversy or scandel for all their years of Public Service (McBurneys).

Certainly the Respondent, as Dipretes top aide during His Mayor and Governor days, has understood inside politicaL dealings in the State of Rhode Island and had utiized such to good measure against me. It can not be said that such antics by judges do not exist and that Judges are flawed just like every Other human being and susceptible to the same corrupt behavior. The McBurneys have seen so much in terms of such corrupt behavior demonstrated by Judges :so therefore , it should come as no surprise concerning the fraud and misconduct that I have

alleged and attributed to the Respondent.Each and every time that these same allegations have been raised to the various tribunals and Regulatory agencies involved, the 'Immunity Shield' is raised to thwart truth and justice. Divorce lawyers and other guilty parties are protected and never are any of the questions raised by myself or Joann answered-always buried in silence! It seems as if everybody is afraid to deal with our problem in Rhode Island; the truth showing clearly as you have read it. There really have been less than savory people who have been involved with this matter and many are finding their way to jail with the rest soon to follow.

So now I find myself so many years into this struggle with no end in sight- I can not go backwards and I am stalemated when I do proceed forward. I remain resolute because I really have no choice.

I will continue until someone answers me directly! No more evasiveness ; no more B___- S____! If I am wrong, then explain to me 'why' by answering the 'questions presented'. The RI Supreme Court Order leaves me even more determined because of the vague

references suggested by that Court. I also wonder why none of my cases has ever been published in the Atlantic Reporter (again, to bury in silence) or for that matter never any inquiry raised concerning my arguments . I have been told by close friends that I have become obcessive and have lost so much during this ordeal.They have told me that you can not fight corruption in Rhode Island, Maybe So, but I just can not 'give up' without seeing this through. It has become more than just the money or compensation due for the harm sufferered .

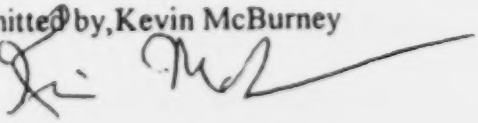
So at this juncture, what I really am asking the Supreme Court of the United States to do is to tell me if it is O.K or find it acceptable Judicial behavior for a Judge to have done to me what the Respondent had done to me during 1993-4-Because he ruined my life when he decided to intervene in a Family Fight.

So I ask- is it o.k for a Judge to Alter a Transcript the way that he did ($50,000),to Appoint a guardianship-recklessly! To assist Lawyers and provide cover for Lawyers who engage in fraud and misconduct under his 'Umbrella of Immunity; to conduct

conferences in the back room of the Court chambers without the parties present; to allow full hearings to proceed- without a Stenographer to record the proceedings; to unseal a court file Secretly kept (then lieing about it)-same Action done without Any motion or document of record to underscore this Exparte proceeding ; to compel another Judge to Rule against me.NOTE; The case had nothing to do with an Assault-only the Attorney misconduct/fraud and the Respondents meddling into another Judges decision.The references to O.J' Simpson and other persons were only suggested by Beecher (before he went to Jail) in order to secure the relief requested. Here there was no reference to fear at all during the Proceeding- Joann was not afraid of –She was just mad about my entry into my home andTo violate Rule 60 so wantonly and recklessly.

The ultimate question that I ask is whether a Judge can get away with all that – is it permissable.If it is permissable then what are the limitations to such a dangerous course of action.

Submitted by,Kevin McBurney



APPENDICES

Supreme Court

No. 98-218A

(PC/ 96-4084)

Kevin McBurney

v.

Jeremiah Jeremiah

ORDER

This case is before us on the plaintiffs appeal from th e dismissal of his complaint pursuant to Super. R. Civ. 12(b)(2)

Lack ofjurisdiction) ,12(b)(5) insufficiency of process and Super. R Civ. P 41(b)(2) for failure to state a claim upon which relief n be granted and Super. R. Civ. P. 41(b)(2) for failure to serve the defendant within a reasonable time. After consideration of the pre-briefing materials this case was assigned to the full court for a session in conference in accordance with Rule 12A(3)(b) of the Supreme Court Rules of Appellate procedure. At the time, we Proceed ti decide this appeal wethout further briefing and argument.

The plaintiff, Kevin McBurney , brought suit against the defendant, Chief Judge Jeremiah S, Jeremiah of the FamilyCourt,

alleging that the defendant committed misconduct during the plaintiffs divorce proceedingsd. In his complaint the plaintiff Made numerous allegations including that the defendant :conspired with attorneys in the proceedings to secure attorneys fees from the plaintiffs accounts;improperly appointed a guardian for the plaintiff, thereby damaging the plaintiffs reputation and his interest in McBurney law Services, Inc. improperly creditted plaintiffs wife for certain funds withdrawn from the plaintiffs accounts;improperly advised a trial magistrate to rule against plaintiff in an abuse complaint filed by the plaintiff against his wife;defrauded plaintiff by signing an altered stipulation; and continually harassed plaintiff in the divorce proceedings. Yhe plaintiffserved the complaint and summons by leaving a copy of each with the defendants secretary at his office. The trial justice dismissed the plaintiffs actions on the grounds of both judicial immunity and insufficientservice of process.

"Before reaching the merits of the plaintiffs appeal, we are reminded that when reviewing a justices order granting a Rule 12(b)(6) motion to dismiss, this Court examines the allegations contained in the plaintiffs complaint, assumes them to be true, and views them in the light most favorable to the plaintiff" Folan V. State 723 A.2d, 287,289 (RI 1999) (quoting Ellis v, Rhode Island Public Transit Authority 556 A,2d. 1055, 1057 (RI 1991). The motion will be granted only when iot is clear beyond a reasonable doubt that the plaintiff would not be entitled to relief from the defendant under any set of facts that could be proven in support of the plaintiffs claim".

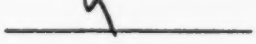
Even looking at the allegations contained in the plaintiff's complaint in the light most favorable to the plaintiff, all of the defendants alleged conduct is said to have occurred in the course of the defendants exercise of his judicial duty as a justice of the Family Court .However displeased the plaintiff may be with the results of this divorce litigation, it is abundantly clear that at the time of the defendants rulings and alleged actions, the defendant

was acting as a Family court justiceand had clear subject matter jurisdiction over the matters then before him and about which the plaintiff, in what we discern to be a most frivolous complaint , now complains. The defendant, because of that subject matter jurisdiction , enjoys absolute immunity from any damage liability and can not be deprived of that immunity even if his actions were in error ,done maliciously , or in the excess of his authority. The Defendant, unless he acted in the clear absence of jurisdiction over The subject matter before him, is absolutely immune from the damageliability sought by the plaintiff .Stump v. Sparkman 435 U.S. 349, 98 S.Ct1099, 55 L.Rd. 2d. 331 (19780 Reh. Den. 436 U.S. 951; Pierson v. Ray , 386 U.S. 547, %%#-54, 87 S.Ct. 1213,1217-18 18 L.Rd. 288 (1966) ; Bradley v. Fisher 80 U.S. 335 , 351 (1872); Randall v. Brigham ,7 Wall 523 (1869) ;Bettencourt v. Board of Registration in Medicine ,904 F.2d 772,782 (1st cir. 1990) ; Roberts v. Alprin 443 A.2d. 433, 435 (RI 1982) (per curiam) .

The trial justiceaccordingly did not err in finding the defendant to be entitled to judicial immunity and in dismissing the plaintiffs action. The plaintiffs appeal, which we conclude to be frivolous, is accordingly denied and dismissed.

Entered as an order of this Court this March 26,1999.

By Order,



AUGUST5,1997 A.m. SESSION

(Counsel argued the motion for summary judgment

The following is a requested portion of the proceedings).

THE COURT: With respect to the 12(b) 6 motion, the case law is

That the Court should not dismiss a claim unless , as I've said before , it

appears beyond a reasonable doubt the plaintiff is not entitled to relief no

matter what the facts could be proved.

In Grasso v. Byrd and some of the other cases which are cited to R

12, we see, though that the rule contemplates a motion to dismiss for failure

to state a claim can be granted where it's clear beyond a reasonable doubt

the petitioner or plaintiff will be unable to prove his right to relief. In that

instance, the trial judge must construe the complaint in the light most favorable to the plaintiff with all doubts resolved in the plaintiffs favor and all allegations accepted as true.

I've listened to the arguments, I've read the complaint all Pleadings respecting the motion , and I think the law regarding immunity is correctly stated in the moving parties memorandum. From what I can tell from the pleadings And the arguments here, the plaintiff hasn't alleged enough facts which would over-

ıe the immunity argument.

The question is whether or not the particular acts were judicial. To determine This , the court must focus on , first, whether the precise act is a normal judicail function; two, where the events occurred; three, whether the controversy centered

around a case then pending before the judge; and four , whether the events in issue were out Of a confrontation with the judge in his official capacity.

Considering the argument and the pleadings, that analysis can't be proved.Furthermore on the 12(B) 5 and 2 motions, the rule is clear. Rule 4 is clear. Service Must be made personally or may be left at the indivituals dwelling weth a person of suitable age or discretion . Neither was accomplished. There were remedies for alternate service which the plaintiff did not avail himself of. As a result, the service of process wqs not sufficient and the Court has no jurisdiction over the defendant at present, Also, Rule 41 permits a court to dismiss a case for lack of compliance weth the rules of the court. The lack of compliance with Rule 4, in particular, has significant consequences Including lack of jurisdiction.The Court should exercise its discretion under Tule 41 as well and dismiss.

So on the 12(b)6,12(b)5 and the 12(b)2, the motions are all granted. There is no need for me to reach 12(b)8. I'll note your exception, Mr. McBurney.

Joann McBurney Su
preme Court(RI)
V. No. 93-485-Appeal

Kevin McBurney (FC 93-899)

ORDER

This case came before the court for oral argument October Pursuant to an order that had directed the defendnat to appear And show cause why his appeal should not be summarily be Denied and dismissed. After hearing the arguments from the Defendant, Pro Se, and the arguments from the opposing Counsel and examining the memeoranda filed by the parties, We are of the opinion that cause has not been shown.

The defendant had appealed from an Order of the Family Court requiring him to pay a counsel fee. This counsel fee has Now been waived. He further appealed from that portion of The Order that appointed a guardian - litem for the defendant. This Order was later vacated and the guardian discharged. Therefore, all of the issues raised by the defendant are moot.

Consequently, the defendants appeal is denied - dismissed Since there is no longer a case or controversy pending before

The Court

Entered as an Order of this court this 14th day of October 1994.

By Order,

_____
Clerk[1]

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[1]. Steven Orteleva was the opposing counsel. He is the attorney-husband of Brenda Rioles. He had never at any time entered his appearance on behalf of Joann Mcburney-who was not present nor did she care about this matter before the Supreme Court of Rhode Island. This appeal concerned only Kevin McBurney and Brenda Rioles- and Jeremiah.It had nothing to do with Joann McBurney!
2. By appealing this counsel fee award procured by fraud(no billing statement or basis whatsoever to award such a random sum AND based upon contrived,frivolous and bogus time alleged), the Petitioner ,literally, 'saved his own neck' by stopping Rioles and Jeremiah from stealing. They scurried 'like rats' to disavow the counsel fee(waiver) and stay clear of the Guardianship(vacate) once the appeal was undertaken with the harm already resulting. The RI Supreme Court could have made 'new law' concerning these vital issues. Instead, it chose mootness.
3.NO reason,basis, medical evidence, no opportunity to be heard (before Constitutional rights are violated) or any explanation or justification whatsoever was provided by the Respondent before he had undertaken such a vile, drastic action resulting in such a devastating impact that stigmatizes the petitioner to the prese4nt day. As stated assertively in the Petition, The Respondent could not have harmed the Petitioner moreso even if he would have shot the Petitioner (less suffering). The simple fact remains that the Petitioner was at the Boston Federal Circuit Court on business that day (July 27-30,1993) and had told his attorney,representing him all throughout this time , to request a continuance because the case had been continued at least five (5) times previously by the lawyers and Jeremiah (never the Petitioner). The sad truth to this entire affair is that , technically, the only issue before the family court on that day concerned a menial and insignificant Motion to Compel answers to Interrogatories-that were never going to be answered

Supreme Court, U.S.
FILED
DEC 26 1999

No. 99-743

IN THE

Supreme Court of the United States

KEVIN MCBURNEY,

Petitioner,

v.

JEREMIAH J. JEREMIAH, Jr.,

Respondent.

On Petition for a Writ of Certiorari to the
Supreme Court of the State of Rhode Island

REPLY BRIEF OF PETITIONER, KEVIN MCBURNEY IN SUPPLEMENT OF PETITION FOR A WRIT OF CERTIORARI

KEVIN MCBURNEY,
171 Walcott Street
Pawtucket, RI 02860
(401) 274-5493-TEL
(401) 521-1203-FAX

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REPLY BRIEF IS REALLY A SUPPLEMENT IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI.BECAUSE RESPONDENT WAVED HIS RIGHT TO RESPOND!

The Petitioner was prepared to reply and refute any attempt by the Respondent to exonerate or excuse his (mis)conduct that he had demonstrated against the Petitioner during 1993-4. The Petitioner's proof in support of his position that the Respondent is not afforded Judicial Immunity for his actions is that precise and clear.

Not surprisingly, the Respondent waived his right to respond and thereby avoided addressing any of the Petitioner's allegations that were directed against him. He chose to remain hidden behind his Shield of immunity. Fearful that the truth will, once again, be 'buried in silence' without the Respondents explanation of his actions, the Petitioner sought instruction with the Clerk of Court whether he could file a Reply or Supplement if the Respondent waived his right to respond. He received permission to do so but was admonished to file same in advance of the date that this Court **will** conference this matter on January 7, 2000 — in order to ensure that it would be reviewed. There is NO repetition of argument.

The Petitioner is compelled to supplement with the factual detail and certain proof in support of his allegations and claims to suggest that the Respondent should not be afforded Judicial Immunity for his actions. The respondent should be held accountable to explain his actions and the devastating harm that he has caused to the Petitioner. The very reason why Petitioner earlier had argued in such a caustic tone was to 'draw the Respondent out' from behind his shield and to

explain himself for what he had done to the McBurney family"[1].

RESPONDENT WAIVED HIS RIGHT TO RESPOND (EXPLAIN) HIS ACTIONS CONCERNING THE 6/25/93 ALTERATION OF THE COURT TRANSCRIPT, THE GUARDIANSHIP, HIS PROTECTION OF DIVORCE ATTORNEYS ENGAGING IN MISCONDUCT AND FRAUD (and more) BECAUSE HE IS GUILTY.

Petitioner has alleged and demonstrated with clear and unequivocal proof that the Respondent had Altered a Court Transcript without disclosing same occurrence; Appointed a Guardianship for the Petitioner as a weapon when the Family Court Judges are not empowered to do so; Protected the acts of fraud and misconduct of Divorce Lawyers by shielding their actions under his 'umbrella of Immunity'; Allowed

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[1] At present, John F. McBurney, Jr. remains hospitalized due to a severe stroke because his children have failed him (he has filed a RI Supreme Court Appeal Against Christene, his own daughter, because of her betrayal of his interests — See 99- , Ann McBurney (Petitioner's mother) travels frequently AWAY from Rhode Island in order to escape her 'pain'; a disgraced (former) brother -in law had tried to hang himself a McBurney relative (State Prosecutor) shot himself in suicide; the McBurney family remains on the verge of complete collapse as the Petitioner, homeless and penniless, has resumed his Corporate litigation (with Counsel) against Christene and continues to pursue Rioles and the others in the State Court as well. If this Court grants this Petition then the Petitioner would clearly demonstrate that all such misfortunes that have crippled the Petitioner and his family are directly attributed to the actions of the Respondent (and those who exploited the advantage by following his lead under his 'umbrella of Immunity" — to wit: Rioles, Beecher and the others — Christene) who had effectively prevented the Petitioner and his father from joining in alliance in 1993. At the very least, in addition to reviewing the Doctrine of Judicial Immunity, the Petitioner will guarantee interesting reading with the valued lesson to be learned concerning the interference with family unity and greed.

court hearings to proceed without a Court Reporter (intentionally in order to facilitate an act of fraud),conducted back-room unrecorded conferences with only the Lawyers present in order to coordinate illegal/ improper activity; influenced other Judges to rule against Petitioner and other improper activity. Yet the Respondent does not refute, explain or even deny the allegations.

Perhaps his 'silence' would indicate complete culpability and reflect his strategy to hide behind his Shield of Immunity. Perhaps he or his attorney realizes that any response would invite Greater scrutiny and contradiction because of the strength of the Petitioners proof in support of what he has alleged.

The ALTERATION OF TRANSCRIPT *(6/25/93)* was not concocted by accident but rather by purposeful intent in order to fraudulently secure Counsel Fees from a ready and available source — $50,000 Savings Bank Account held in restraint by the villainous Rioles. Since Joann (knowing that the $50,000 represented the children's money) and Petitioner understood this ulterior motivation of the Legal Professionals then they could deftly out-maneuver and thwart this fraudulent design by turning the entire account directly over to Joann for application toward child support, thereby releasing the Restraint (and away from the control of the Lawyers who served only their own interests). Even the Respondent could not prevent the Wife from receiving child support in this regard. The Respondent and the Lawyers must have been caught off — guard by this action because they had failed to react. The Respondent would have been within his right if he had Ordered on June 25, 1993 that the $50,000 Bank Account, which is a marital Asset being diminished or dissipated (albeit for child support), should be replenished or re-credited back to the account. However, HE DID NOT DO SO AT THAT TIME! — June 25, 1993. It was clear that the Petitioner and Joann would have vehemently opposed such an

action so the only way to circumvent their opposition to ensure that there would be 'money in the bank' for future counsel fees would be to alter the transcript thereafter. All of the facts, circumstances and events during that time would lead to only this conclusion because there was no preceding or follow-up discussion to any Replenishment suggestion until 4 months later when Rioles had drafted on October 12,1993, An Amended Order of the June 14,1993 which so reflects a replenishment or re-crediting of the account. Standing alone, this Amended Order was seemingly 'Bizarre' as Bigos called it upon his objection because it not only contradicts the original June 14, 1993 Court Order that Rioles had drafted as well but it also misconstrues the events of that time period[2]. When the June 25, 1993 transcript was received In February of 1994, the Alteration by Fraud became clear to understand as the petitioner began to put this mystery together — Detective-style. If the Supreme Court of the United States grants this Petition and sets this matter down for 'Full Briefing' then the Petitioner would set forth in a clear, precise and intelligent manner All of these referred to details that would establish such an Alteration by Fraud. If such an heinous conspiracy had, indeed, taken place then should the Shield of Immunity be afforded to such individuals as the Respondent. Would others similarly pre-disposed attempt the same approach (with the tacit endorsement of the Highest Court in the land). It is enormously difficult to prove such an occurrence, short of an admission of guilt. These are all human beings — Lawyers,

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[2] The June 14, 1993 proceeding never concerned any matter relating to releasing the $50,000 to Joann directly, June 25,1993 did. Rioles had 'got it backwards' in her haste to take advantage of the fact, AS EVERYONE CONCEDES, that no stenographer was present to transcribe events on June 14, 1993. The most logical place to insert an altered reference by fraud would be to insert where no transcript is available to contradict.

Judges and stenographers (the last line of defense re: truthful transcriptions of Court proceedings)-susceptible

As any others to wrongdoing and temptation. The Petitioners Proof is as ' strong as it gets' in order to establish such a clandestinely despicable act with all of its revelations and reverberations-that he is the victim of.

The GUARDIANSHIP APPOINTMENT was an action that not only deprived the Petitioner of all of his Constitutional rights to be notified, heard and offer opposition to such a drastic action that effectively ruined the his life from that point on but it also was an action undertaken beyond the Jurisdiction of the Respondent to so take-only Probate Judges are so empowered to appoint as the Respondent had according to Rhode Island General Laws — Section 33-15-1 *et. seq.* . It must be remembered that the only real issue to be heard during that time — was a menial and inconsequential Motion to Compel answers to Interrogatories that the Petitioners Attorney, who was present throughout this time acting on behalf of the Petitioner, could have handled without the Petitioner being present. Everyone was aware that the Petitioner had more urgent business to tend to in the Federal Court in Boston. To employ such a drastic action goes way beyond all Jurisdiction of the Respondent who had acted in the Complete Absence of same[4].

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[4] The very worst action that the Respondent could have inflicted would have been to Adjudge the Petitioner in Contempt because of his absence and his desire to continue the matter for the Sixth time. There was no Rule of Procedure, Document of Evidence or Edict of Law to support the Respondent for what he had done to the Petitioner with the devastating harm resulting. Because the Respondent has been able to avoid repercussions for his action, the Petitioner has not been able to inquire if there has been any other case situation in the Annals of Family

In any event, if this Petition was granted and the matter went to full brief then the Petitioner would show that this appointment Was made to protect Rioles[4] and the lawyers[5] who were caught by the Petitioner engaging in obvious acts of Fraud and misconduct AS WELL AS to assist Christine McBurney(and others) with her take over of the family law firm[6]. The Guardianship effectively Silenced the Petitioner and Neutralized him as a Pivotal force in the McBurney Family affairs as well as ruining his career.

The PROTECTION OF THE DIVORCE LAWYERS under his umbrella of Immunity because of their acts of fraud, forgery, misrepresentation, deceit, alteration of court orders-etc., embezzlement offunds,CONDUCTING BACK-ROOM SECRET PROCEEDINGS IN CONFERENCE WITH THE LAWYERS, PERMITTING COURT ROOM PROCEEDINGS TO TAKE PLACE WITHOUT A STENOGRAPHER-thereafter Executing false Orders of the

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Court whereby a person had such a devastating appointment made against his personal liberty and rights as a human being.

[4] Rioles is purportedly related by blood to those in Prominent positions in the RI Family Court.

[5] Joanns second lawyer, Robert Beecher, was convicted and received jail sentence for similar exploits that he had conducted as an attorney. The Petitioner and Joann have instituted a Superior Court Civil Action in this regard (P96-4922) that now primarily focuses upon the liability of Beechers former Law Partners for Beechers actions. Beecher has "dropped out of sight".

[6] Petitioner was blackballed as a risk to the law firm with potential liability in the eyes of clients and intense scrutiny from the Disciplinary counsel. Petitioners previously strong alliance and bond with his father was broken and severed, forever. She then proceeded to effectively oust both of us from the Family business in complete take-over. Her perpetration -Arson of the Law Office building in August of 1993 (with the death of a fireman resulting) assisted in this endeavor.

Court to be executed by clerks, IMPERMISSABLY SEALING COURT FILES TO AVOID INQUIRY — but unsealing same in private for Beecher, INFLUENCING ANOTHER JUDGES REVIEW OF A CASE and the other matters alleged would all be addressed upon full brief if this Petition was granted.

Because he is so sure of his proof as well as the culpability of defendant The Petitioner has risked so much and has carried on for so long during these past 7 years. The more the defendants avoids addressing any of these concerns and allegations (preferring to bury them in silence) the more convinced the Petitioner remains of his guilt. . . and the more resolved and determined the Petitioner becomes to see the matter through until the complete truth is told and justice is finally dispensed.

However, if the Respondent is permitted to continue to raise his Shield and shroud all of the inquiry as to the events, circumstances and issues as to his actions during 1993-94 as concerning the Petitioner then the truth might very well be buried along with the Respondents silence and otherwise improper Judicial conduct would go by the way-side, unpunished. Other direputable Judges would review this Case as a 'blue-print' for Engaging in similar (mis)conduct.

By granting this Petition, Respondent would be compelled to step from behind his shield and be made to explain his actions.

CONCLUSION

Based on the arguments presented and the reasons set forth above and in the Petition. The Petitioner respectfully requests that the Court accept certiorari jurisdiction in this case pursuant to Rule 10(a) of the Rules of the supreme Court of the United States and review the Doctrine of Judicial Immunity in light of the facts, circumstances and events as presented by the Petitioners Claims for relief.

Respectfully submitted,

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